IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 19521 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MEGHJIBHAI ATABHAI CHUDASANA - Petitioner(s)

Versus

GOVT. OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR DP VORA for Petitioner(s) : 1,
Mr. MR Mengdey, AGP for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2,
NOTICE NOT RECD BACK for Respondent(s) : 3,
MR RUTVIJ M BHATT for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 21/10/2005

ORAL JUDGMENT

In this petition under Article 226 of the Constitution of India the petitioner has challenged the legality and validity of the order passed by the Collector, Bhavnagar, dated 2nd August 2005 in

Municipal Remand Case No. 101/1995 directing the petitioner to pay an amount of Rs. 2,92,500 towards difference in market price.

2. A piece of land was allotted in favour of the petitioner by Palitana Municipality vide Resolution dated 4.2.1993 and the same was taken under suo motu revision by the Collector, Bhavnagar, under Section 258 of the Gujarat Municipalities Act. Some order came to be passed which was the subject matter of Special Civil Application No. 655 of 1998 and the said petition along with other two Special Civil Applications came to be disposed of by this Court [Coram: M.S. Shah, J.] on 4th August 1998 and while quashing and setting aside the order passed by the Collector dated 7.6.1998 as well as the order passed by the State Government in revision, the Collector was directed to get market value of the lands in question in Palitana as on 4.2.1993 as assessed by the Town Planning Department and the concerned Officer of the Town Planning Department was required to submit Report to the Collector after considering the relevant material for determining the value of the lands in question as on 4.2.1993 including such material as may be produced by the petitioner and the Collector was directed to take final decision regarding valuation of the lands in question as on 4.2.1993. That is how the Collector, Bhavnagar, has passed the impugned order by which after assessment and considering the report submitted

by the Town Planning Officer the Collector, Bhavnagar has directed the petitioner to pay an amount of Rs. 2,92,500 being difference in the market price of the land in question. Being aggrieved and dissatisfied with the same, the petitioner has preferred the present Special Civil Application.

3. The main grievance voiced by the petitioner in the present Special Civil Application through his learned advocate Shri DP Vora is that before passing the impugned order and directing the petitioner to pay an amount of Rs. 2,92,500 being the difference in market price, the petitioner was not served with the Report submitted by the Town Planning Officer upon which reliance has been placed by the Collector, Bhavnagar determining and assessing the market price as on 4.2.1993 and therefore the same is in breach of principles of natural justice. Shri Mengdey, learned AGP is not in position to satisfy this Court whether the report submitted by the Town Planning Officer which has been relied upon by the Collector while passing the impugned order and directing the petitioner to pay the amount of Rs. 2,92,500 has been served upon the petitioner or not. It prima facie appears that the copy of the report submitted by the Town Planning Officer which is relied upon by the Collector determining/assessing the market price as on 4.2.1993 has not been given to the petitioner and thus the petitioner has not been given an opportunity to controvert the market price determined by the Town

Planning Officer and/or the Collector. Under the circumstances, to that extent the impugned order passed by the Collector, Bhavnagar is in breach of principles of natural justice and therefore without going into the merits of the matter, the matter is required to be remanded to the Collector, Bhavnagar for passing an order afresh after giving opportunity to the petitioner and after the coppy of the Report of the Town Planning Officer making assessment/determining the market price as on 4.2.1993 is supplied.

4. For the reasons stated above, the petition partly succeeds. The order passed by the Collector, Bhavnagar, impugned in the petition is quashed and set aside. The matter is remanded to the Collector for passing an order afresh in accordance with law and on merits after giving opportunity to the petitioner on supply of material upon which reliance has been placed by the Collector determining the market price of the land in question inclusive of the report of the Town Planning Officer. Such an exercise should be done by the Collector, Bhavnagar, within the period of 3 months from the date of receipt of this order, as the matter is already delayed. It is, however, made clear that this Court has not expressed any opinion on the merits of the impugned order and the impugned order is set aside only on the ground that the same is in breach of principles of natural justice and it is ultimately for the Collector, Bhavnagar to take fresh decision as stated above.

5. Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R. Shah, J.]

RMR.